

21 MS. PISCIOTTA: Aloha. We ask you Akua to
22 abide with us this day as we speak on these issues.
23 We ask blessings for all, and we ask for forgiveness
24 of the trespasses that may occur.

25 E kala mai, I'm not used to reading, but

125

1 I'm going to read because I'm kind of tired and I
2 hope that's okay. Just forewarning.

3 I want to open up by asking why are we here
4 today? We're here today because BLNR said yes when
5 they should have said no. The job of any regulatory
6 agency, including BLNR, is to regulate, and that
7 means it must sometimes say no to projects, like the
8 Thirty Meter Telescope, that are inconsistent with
9 the purpose and mandate of the laws that govern the
10 Mauna Kea Conservation District.

11 We do not know if the Department of Land
12 and Natural Resources staff did not do due diligence
13 when scrutinizing the University TMT Corporation's
14 Conservation District Use Application, but
15 nevertheless BLNR has a non-transferable duty to
16 protect the public rights and reasonable exercise of
17 traditional and customary Hawaiian cultural and
18 religious rights.

19 That means they cannot let a private entity

20 like the TMT Corporation or a subdivision of the
21 State that is not mandated to oversee Conservation
22 Districts like UH to perform those duties instead.
23 BLNR has an affirmative duty to protect the people of
24 Hawaii as the Supreme Court of Hawaii hs repeatedly
25 upheld.

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1 We believe the evidence has demonstrated
2 that the TMT project is inconsistent with the laws
3 and policies of this state.

4 To understand why BLNR should have said no
5 instead of saying yes, we need to briefly trace the
6 origins of BLNR's responsibility to the people of
7 Hawaii, that is identify why BLNR has fiduciary duty
8 to protect the rights and interests of Hawaiians and
9 the general public.

10 These duties and obligations are enumerated
11 in the following documents: The Admissions Act, the
12 State of Hawaii Constitution, and all of the related
13 statutes, rules and regulations governing the
14 conservation lands of Mauna Kea.

15 Let us review. The Admissions Act is a
16 federal act, compact or agreement made between the
17 United States Congress and the people of Hawaii, thus
18 forming what is now known as the State of Hawaii.

19 Regardless of the tenuous history that led
20 up to statehood, the Admissions Act clearly
21 identifies certain agreements made by America, and
22 they take precedence as they establish some of the
23 fiduciary obligations that BLNR, as the state agency,
24 has towards the people of Hawaii.

25 The Admissions Act establishes, one:

1 The lands of Hawaii are to be held in trust
2 for the purpose of the betterment of the condition of
3 Native Hawaiians and the general public.

4 The state shall be the trustee, it says.
5 And, in other words, the lands of Hawaii must be used
6 in a manner consistent with the Admissions Act which
7 is, again, a federal law.

8 I would like to note that the racial
9 identification for Native Hawaiians came into
10 existence in 1920 and '21 when Congress made the
11 50 percent blood quantum requirement for Hawaiian
12 Home Lands. However, the Admissions Act provided for
13 Hawaiians of less than 50 percent, and other actual
14 subjects of the kingdom of all ethnicities. And that
15 was Hawaiian, as a political identification, not a
16 racial one.

17 So the general public are all those who
18 trace their ancestry of all ethnicities prior to
19 actually 1921, 1893, at least 1898. I don't consider
20 the republic real.

21 Mauna Kea Conservation District lands are
22 entirely comprised of those public trust lands that
23 are identified in the Admissions Act. However, these
24 lands have protection not only under the public trust
25 laws, but under the Conservation and Historic

1 Preservation laws of the state as well.

2 Therefore, in considering the TMT
3 Conservation District Use Permit, BLNR must consider
4 how proposed projects like the TMT benefit the people
5 of Hawaii. Better the conditions of Native Hawaiians
6 and the general public, not the interest of the
7 international astronomy industry or foreign direct
8 investment to be subsidized on public lands by
9 taxpayers.

10 Now, the state constitution contains or
11 reflects the Admissions Act agreements as well.

12 Article 12, Section 9 affords the
13 protection of Native Hawaiian traditional and
14 customary rights, while Article 9, Section 8 provides
15 that all people have the right to conservation and a
16 clean and healthful environment, and further that any
17 one individual or group may bring suit for the
18 conditions outlined in the provisions.

19 Hawaii is unique. Lucky we live in
20 Hawaii. Because of the provisions established in
21 both the Admissions Act and the Constitution, we now
22 have, among other things, protection for the
23 environment and conservation written right into our
24 Constitution.

25 So when the question arises, should a new

1 telescope project be approved, the BLNR must consider
2 their obligation. But did they consider it?

3 Well, when the TMT proposal came before
4 BLNR and UH, the DLNR staff report, both affirmed
5 that, and I quote:

6 From a cumulative perspective, the impact
7 of past and present actions on cultural,
8 archaeological, and historic resources is
9 substantial, significant and adverse.

10 These impacts would continue to be
11 substantial, significant and adverse with the
12 consideration of the TMT project, and other
13 reasonably foreseeable future actions.

14 Further, the DLNR chairperson is quoted as
15 saying:

16 It is our view that the effect of astronomy
17 development on cultural resources and on the
18 landscape of Mauna Kea has been significant and
19 adverse. While a project such as TMT can bring new
20 resources into play that may mitigate certain
21 cultural impacts and even benefit Native Hawaiians,
22 we believe that the project will increase the level
23 of impact on cultural resources, which remains to be
24 significant and adverse.

25 Therefore, the record demonstrates that, if

1 built, the TMT would contribute significant, adverse
2 and substantial harm to conservation resources on
3 Mauna Kea, including cultural and natural resources,
4 which are public trust resources meant to be
5 protected.

6 And so these are two of the reasons why
7 BLNR should have said no when they said yes.

8 Conservation laws. The rules governing
9 Conservation District Use, or in this case
10 development of yet another telescope on Mauna Kea,
11 allow for this contested case hearing to happen.

12 Generally, the purpose of a contested case
13 hearing is to afford members of the public with
14 specific interests, legal rights, duties or
15 privileges, an opportunity to present evidence,
16 examine witnesses and so on, in order to help BLNR
17 make an informed decision.

18 I have to note here that in this case BLNR
19 approved the TMT CDUA prior to conducting a contested
20 case hearing, which we believe violated our due
21 process rights, potentially shifting the burden of
22 proof, and thereby forcing us to have to change
23 BLNR's mind, rather than BLNR listening with an open
24 mind to hear all evidence.

25 Nevertheless, the University has rightly

1 affirmed that they, as the Applicant, have the burden
2 of proof, and we are here today to provide evidence
3 and present witness testimony to help BLNR make an
4 informed decision now before they dispose of more
5 public lands and conservation lands belonging to the
6 people.

7 The purpose of the Mauna Kea Conservation
8 District is enumerated in Hawaii Revised Statute
9 183C-1: The legislature finds that lands within the
10 State Land Use Conservation District contain
11 important natural resources essential to the
12 preservation of the state's fragile natural ecosystem
13 and the sustainability of the state's water supply.
14 It is therefore the intent of the legislature to
15 conserve, protect and preserve the important natural
16 resources of the state through appropriate management
17 and use to promote their long-term sustainability and
18 the public health, safety and welfare.

19 The law is clear, the purpose of the Mauna
20 Kea Conservation District, as is the case of all
21 Conservation Districts, is conservation. The purpose
22 is not development. Development can occur if and
23 only if the critical cultural natural resources are
24 conserved, protected and preserved.

25 In order to determine BLNR meets its legal

1 requirements and obligations, they're supposed to
2 apply a set of rules, or the eight criteria. BLNR
3 applies these -- they must meet all of the eight,
4 that's also part of the rule. So do you have the
5 rule?

6 Along with the eight rules there's one
7 other condition, and that is that the Applicant shall
8 have the burden of demonstrating that they have met
9 all of these conditions. Which also means that it's
10 not our job to prove that the impacts will occur,
11 it's the University's job to prove that they won't.

12 We submit the evidence has shown that they
13 have not met their burden under the law.

14 Number 1: The TMT project does not meet
15 the first criteria. It does not meet the purpose,
16 because it does not meet the purpose of the
17 conservation district. Again, they admit that the
18 cumulative impact of the cultural natural resources
19 is substantial, significant and adverse.

20 Secondly: In order for the TMT to be
21 built, the land will have to be hoe rammed,
22 dynamited, and bulldozed and other heavy machinery
23 used to carve up and destroy more than five acres of
24 Mauna Kea sacred lands. So it is not consistent with
25 the purpose of Conservation District.

1 Second, the TMT project does not meet the
2 second criteria. It doesn't meet the purpose of the
3 subzone, because no subzone purpose can override the
4 first purpose which is conservation. While astronomy
5 is a permitted sub-use, again, it is permitted if and
6 only if no substantial adverse impact occurred in
7 Conservation District, but the UH has already
8 admitted that those impacts will occur and they will
9 be adverse, substantial and significant.

10 The TMT projects does not meet the fourth
11 criteria prohibiting substantial adverse impact.
12 I'll get back to that, but I do want to mention that
13 the evidence have demonstrated there is not only
14 historical injury, but continued injury and there
15 will be additional injury if TMT is allowed to be
16 built.

17 The TMT project does not meet the fifth
18 criteria because it is not compatible with the
19 locality and surrounding area. The TMT if built will
20 sit right smack dab in the middle of what is called
21 the ritual landscape or the ring of shrines that
22 surround the set of summit cinder cones, also known
23 as Kukahau'ula. These features are part of the
24 Historic District, which contain many traditional
25 cultural properties, which is further affirmed in the

1 Cultural Impact Assessment and cultural reports that
2 have been done throughout the years.

3 The TMT project does not meet the sixth
4 criteria, protecting open space or natural beauty,
5 because it does not preserve or improve upon the
6 natural characteristics such as open space or natural
7 beauty. The operative word in natural is natural,
8 not industrial. Open space means just that, open
9 space. Both of which are considered by the state and
10 the county as public trust resources. And the loss
11 of those resources therefore constitute an injury to
12 the public.

13 The TMT project does not meet the eighth
14 criteria regarding the public health, safety and
15 welfare, which requires the project not be materially
16 detrimental to the public health, safety and welfare
17 of the people. We heard UH witnesses testify that
18 the complex hydrology including groundwater flows of
19 Mauna Kea are not known.

20 We also heard that groundwater is the
21 primary source of drinking water. Mauna Kea sits
22 over five aquifers. And the problem that we have
23 here today is while somebody can promise that they
24 intend not to hurt it, if it is hurt, we have no way
25 to clean it up. And that is waters that all life

1 forms rely on. If they can't clean it up, we need to
2 err on the side of caution. When we look at the
3 precautionary principle in the Public Trust Doctrine,
4 the supreme court has already discussed that.

5 Witnesses have testified to the cultural
6 and religious importance of the waters from Mauna
7 Kea, like the snow, ice and water, and the clean
8 water such as those found in the lake and other pu'u
9 used for ceremonial, medicinal and other religious
10 practices.

11 Those practices will not be able to be
12 conducted if the water is contaminated. The
13 University cannot affirm that they will not be.

14 We also heard two witnesses, Dr. Kawika Liu
15 and Kehaulani Kauanui who testified that the
16 University and the Corporation did not even consider,
17 let alone analyze the impacts resulting from highly
18 destructive development upon the landscape on the
19 health and well-being of Native Hawaiian people, and
20 especially those with high cultural affiliations,
21 such cultural practitioners. The landscape of Mauna
22 Kea is a historic, cultural and ritual landscape.

23 Laws are meant to be followed. TMT is the
24 elephant that breaks the law and the camel's back.
25 The University's admission regarding the substantial,

1 significant and adverse impacts that the development
2 has had and will continue to have if the TMT is built
3 to the cultural and natural resources of the Mauna
4 Kea Conservation District mean that the regulatory
5 constraints or limits regarding impacts to resources
6 have already been met, and to allow further impacts
7 would cause these limits to be exceeded.

8 But there are -- the limits are established
9 in the law. And the rules say, no project may have
10 substantial adverse impact. So there are no
11 exceptions provided for in the law or the regulations
12 that there can be no exceptions.

13 If the BLNR allowed the limits to be even
14 more exceeded, then they will be in breach of trust
15 and acting in excess of their authority. And in the
16 case of TMT, the TMT is not only the straw that
17 breaks the camel's back, it is the elephant that will
18 cause the system to break down.

19 This is the case, because TMT is the
20 world's largest telescope, and the largest structure
21 ever proposed for construction on Mauna Kea, and as
22 such, the TMT cannot possibly be construed to reduce
23 the substantial, adverse and significant impacts as
24 they claim.

25 The University has attempted to argue that

1 because impacts are already substantial, adverse and
2 significant, adding more to that impact is not going
3 to change those impacts, while simultaneously
4 claiming their proposed mitigation measures will
5 offset and reduce the negative impacts to less than
6 significant.

7 We disagree, because painting a building a
8 different color, silver, adding furnishings that
9 engender a sense of place, while that place is being
10 destroyed, providing cultural sensitivity workshops
11 or other off-site mitigations, including the THINK
12 program, do not offset the project's destruction of
13 the landscape, or the real impacts to the ecosystem
14 and the living cultural practices in any way.

15 When the impacts are overridden, then the
16 impacts such as the following will occur:

17 Cultural practices will be impacted. In
18 this case the actual injuries are cumulative,
19 historic and also immediate.

20 For example, before the construction of the
21 first telescope in 1967 had a 360-degree view of the
22 skyline, of the island, and even the view down the
23 island chain. Before that time commanding views of
24 the sun, moon, stars, constellations and even the
25 great shadow of Mauna Kea could be enjoyed by all.

1 Since that time, there are no more
2 360-degree views. Views are limited to where and
3 however anyone can get around the observatories to
4 find an open space.

5 The natural beauty is marred with the
6 industrial buildings, and cultural practitioners and
7 the public have to shift and adopt their practice to
8 find a clear path for their traditional and cultural
9 and religious practices. Yet all of these views and
10 aspects -- and yet they're all considered public
11 trust resources that BLNR is mandated to protect.

12 When we go to practice on Mauna Kea, we
13 don't only go to the summit, as University would have
14 us all believe. Practices are dependent on the
15 reason the ceremony is being conducted, and the
16 hundreds of cultural and historic shrines placed
17 around the summit region demonstrate practice is wide
18 spread.

19 Viewplanes, viewscales are public trust
20 resources too. Viewplanes, viewscales and open
21 spaces are also traditional cultural properties.

22 The TMT being placed in the middle of the
23 ring of shrines contain hundreds if not thousands of
24 sites on the northwestern flank of the summit plateau
25 will be impacted because the views used in ceremonies

1 will be blocked in very significant ways.

2 From the ground level, south to north. If
3 we are standing at ground level on the south side of
4 the TMT on the plateau from any of the ahu's or
5 cultural, historic sites looking northward, we will
6 not be able to see Haleakala, as we saw during the
7 site visit, nor any of the other islands in the chain
8 which views are used in some ceremonies, nor will we
9 be able to observe the motion of the northern stars
10 or constellations without direct interference from
11 the TMT, as the height alone is too high.

12 If you're standing at ground level on the
13 east side, we will not be able to see or observe the
14 motion of the western stars or constellations without
15 direct interference from the high reaching TMT.

16 And if you're standing on the ground level
17 on the west side at any of the sites, you will not be
18 able to see or observe motions of the eastern stars
19 or constellations without direct interference from
20 the TMT.

21 And if you're standing on the ground level
22 north of the TMT on the plateau from any of these
23 sites, you will not be able to see or observe the
24 motion of the sun and stars or constellations without
25 direct interference from the TMT.

1 From the pu'u level. Many of the pu'u are
2 considered traditional cultural properties in the
3 Cultural Impact Assessments and studies. They are
4 important as they are often burial sites, places
5 where water, pooling water is collected. And because
6 ceremonies are performed on or from them, many
7 practitioners, including myself, conduct ceremony on
8 the top of Pu'u Poli'ahu.

9 Although I didn't go up on the site visit,
10 I spend a lot of time up there and I'm very familiar
11 with the viewplanes from there. I spent seven
12 consecutive nights camping on the top in ceremony.

13 From the summit pu'u's. We specifically
14 asked on the site visit to go to those locations on
15 the north-facing side of the summit to demonstrate
16 how much of an impact that will be from over there.
17 As we said earlier, we have to move already around
18 the telescope, so taking away even that viewplane
19 adds even more injury.

20 The shrines are specifically set up to be
21 in relationship to the commanding viewplanes, that is
22 what is stated in the Cultural Impact Assessment. So
23 I want to be clear, because when we say alignments,
24 we mean tangible and intangible connections between
25 those places and Mauna Kea. We mean that we can

1 literally see, or not see the other sacred peaks of
2 the hill on the island, or even other -- one of the
3 islands such as the one on Kauai.

4 Once in my life on Mauna Kea I saw the
5 whole island chain, but this view is rare.
6 Nevertheless, Poli'ahu Heiau on Kauai was constructed
7 specifically to be in alignment with the ceremonial
8 direction established on Mauna Kea. Mauna Kea is the
9 fulcrum and baseline for all alignments of this
10 nature.

11 Therefore, when we speak of alignments
12 being blocked, it means we cannot do ceremony in the
13 way that we need to be a part of those alignments,
14 because we are -- they are being physically and
15 spiritually blocked. That in turn interrupts our
16 ability to perform those ceremonies and other
17 cultural practices.

18 A couple of things. Historical injuries
19 that have occurred that have been outlined in a lot
20 of our testimony include the University continuing to
21 impact our religious sites, like my family ahu site.
22 It was desecrated and destroyed three different
23 times, which are documented by the University
24 personnel themselves.

25 Now, as of July 18th of 2011, it was again

1 desecrated. So when the University accuses us of
2 being backward-looking and extremist, both are wrong,
3 because the injuries continue to the present. The
4 lele was taken down, I don't know how many times.
5 These are not okay. When the University claims they
6 were operating with a new paradigm, our practice is
7 being directly impacted. And as for being
8 extremists, I object.

9 We have participated in three contested
10 case hearings on these issues, development of
11 telescopes on Mauna Kea. We believe in justice. We
12 believe in the rule of law and order, and we have
13 participated in order to exhaust our administrative
14 remedy. We have gone into state and federal court.
15 In federal court we were witnesses; in state court we
16 were plaintiffs. In both those courts we won. So
17 the accusation that we are extremists is just not
18 fair and it's unreasonable and it conjures images of
19 people who are extreme.

20 I would say to the University, no Hawaiians
21 have ever gone and desecrated any of the telescopes.
22 But the fundamental difference would be if we had,
23 that those Hawaiians would be criminalized and put in
24 jail for damage to property. The question is,
25 knowing these criminal acts was damage to our temple,

1 it's not even considered. When my family ahu was
2 destroyed, the state DOCARE officers investigated me.
3 I was criminal, even though I turned in the person
4 who did it.

5 It was the State Historic Preservation
6 Officer who actually got me out of that, and had to
7 write a letter on my behalf saying that I had a right
8 to continue my practice.

9 So I want to say one last thing on the
10 comparison the University attempted to make about
11 culture and science. We believe, it is true and we
12 agree with them, it is really about land use. If the
13 University were attempting to build a hospital, the
14 issues would be the same, although that would not
15 mean we were against health care, culture is science
16 and science has its own culture.

17 And some even argue that science is a
18 religion in this modern time. But the modern
19 astronomers are not Galileo and we are not the
20 Vatican. We have been willing to share this mountain
21 for many decades. Our position still is, since 2001,
22 and published in our actual Temple Report, we're
23 willing to share and have shared, but they reached
24 their limit and our position is no further
25 development.

1 This is also Exhibit F-2, page 18. You can
2 find our positions. No further development.
3 International observatories should pay rent, and
4 independent management authority should be created to
5 take the control of Mauna Kea out of the hands of the
6 University.

7 In conclusion, because the TMT will
8 interfere with the public rights and Native Hawaiians
9 rights to fully enjoy the landscape wilderness, open
10 spaces, natural beauty, including the sun, the moon
11 and starscapes obtainable only from Mauna Kea, means
12 the public trust resources are not being protected
13 and the TMT cannot meet its burden under the
14 Conservation District rules. Therefore BLNR must say
15 no. We submit if they say yes, they will be acting
16 in excess of their authority.

17 And I would like to say, mahalo, Ke Akua,
18 Na Akua ame Na Aumakua for giving us this honor to
19 stand and speak for the temple.

20 I would like to say thank you to all of
21 you, Jean, Mr. Aoki, Julie for your patience. I know
22 you know we don't know how everything is supposed to
23 work sometimes. I like to thank the University for
24 listening, and I hope that we didn't offend you in
25 any way, we don't mean to, but we have a right to try

1 to put on a strong case, and that's what we're hoping
2 to do.

3 Mahalo to all of you in the audience for
4 all of your patience, your time and your
5 consideration. And I think I'm done, mahalo.